

PREPARED BY AND AFTER  
RECORDING RETURN TO:

Bradley V. Ritter, Esq.  
Paul Hastings LLP  
191 N. Wacker Drive  
30th Floor  
Chicago, Illinois 60606

Address of Property:  
2010 N. Halsted  
Chicago, Illinois 60614

PIN: 14-32-228-041-0000

*NCS-558808*

Space Above For Recorder's Use

**SECOND AMENDED AND RESTATED MORTGAGE, WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

by

**2010 N. HALSTED, LLC,**  
an Illinois limited liability company, as Mortgagor

and

**ACADIA HAWK LLC,**  
a Delaware limited liability company, as Mortgagee

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter  
810 ILCS 5/9-502(c), et seq.

MORTGAGOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS 33-4705859

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## SECOND AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS SECOND AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage is made as of the 2 day of November 2012 (the "Effective Date"), by 2010 N. HALSTED, LLC, an Illinois limited liability company, having its principal place of business at 908 N. Halsted, Chicago, Illinois, as grantor ("Mortgagor") to ACADIA HAWK LLC, a Delaware limited liability company, having an address at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Mortgagee").

### RECITALS:

A. Pursuant to the terms of that certain Second Amended and Restated Promissory Note (the "Note") of even date herewith given to Mortgagee by 116 E. Oak LLC, an Illinois limited liability company, 2010 N. Halsted, LLC, an Illinois limited liability company, 2118 Halsted, LLC, an Illinois limited liability company, and Biggs Mansion LLC, an Illinois limited liability company (collectively, the "Co-Makers"), the Mortgagor is indebted to Mortgagee in the principal sum of Nineteen Million Five Hundred Thousand and No./100 U.S. Dollars (19,500,000.00) (the "Loan Amount") in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Loan Agreement (as hereinafter defined), principal and interest to be payable in accordance with the terms and conditions provided in the Note.

B. The Co-Makers and the Mortgagee are parties to that certain Second Amended and Restated Loan and Security Agreement dated of even date herewith, as hereafter amended, restated or otherwise modified (the "Loan Agreement"). Defined terms used herein, as indicated by the initial capitalization thereof, shall have the meanings ascribed to such terms in the Loan Agreement, unless otherwise provided herein.

C. The Loan Agreement amends and restates that certain Amended and Restated Loan Agreement, dated March 2, 2012, between 116 E. Oak LLC, an Illinois limited liability company, 2010 N. Halsted, LLC, an Illinois limited liability company, 2118 Halsted, LLC, an Illinois limited liability company, 1520 North Milwaukee LLC, an Illinois limited liability company, and River West Acquisitions, LLC, an Illinois limited liability company (collectively, the "Original Co-Makers") and Mortgagee (the "Original Loan Agreement"), and amends and restates all indebtedness thereunder.

D. The Original Loan Agreement is secured by that certain Amended and Restated Mortgage, with Assignment of Rents, Security Agreement and Fixture Filing executed by Mortgagor in favor of Mortgagee dated March 2, 2012 and recorded March 7, 2012, as document number 1206716060 with the Recorder of Deeds of Cook County, Illinois (the "Prior Mortgage") and this Mortgage shall not constitute a novation of the Prior Mortgage.

E. This Mortgage is given to amend and restate the Prior Mortgage in its entirety such that it shall now and hereafter secure the Obligations of the [Co-Makers/Borrowers] under the Loan Agreement.

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## ARTICLE I

### GRANTS OF SECURITY

#### Section 1.1 Property Mortgaged.

For the purpose of securing payment and performance of the Note and the Other Obligations, including, any and all renewals, or extensions of the whole or any part thereof (and any such renewals or extensions shall not impair in any manner the validity of or priority of this Mortgage) in such order of priority as Mortgagee may determine in its sole and absolute discretion, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, and WARRANTS, to Mortgagee the Property (as hereinafter defined), subject only to the Permitted Liens (as defined in the Loan Agreement), TO HAVE AND TO HOLD the Property and all parts, rights and appurtenances thereof, to Mortgagee.

The "Property" as used herein, shall mean, collectively, the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor:

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where

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any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, early termination fees and payments and other termination fees and payments (any such early termination fees, payments and other termination fees and payments, the "Lease Termination Fees"), revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property and any part thereof or respecting any business or activity conducted on the Property and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Mortgagor thereunder; provided, however, that Mortgagor shall not be deemed to have granted a security interest in (i) any of its rights or interests in any license, contract, or agreement to which Mortgagor is a party or any of its rights or interests thereunder to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement or otherwise, result in a breach of the terms of, or constitute a default thereunder (other than to

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the extent that any such term would be rendered ineffective pursuant to the UCC or any other applicable law or principles of equity) it being understood that upon request of Mortgagee, Mortgagor will in good faith use reasonable efforts to obtain consent for the creation of a security interest in favor of Mortgagee (and to Mortgagee's enforcement of such security interest) in Mortgagor's rights under such license, contract or agreement;

(m) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Proceeds. All proceeds (whether cash proceeds or noncash proceeds, if any) of the foregoing property, including all insurance policies and proceeds of insurance payable by reason of loss or damage to the foregoing property, including unearned premiums, and of eminent domain or condemnation awards; and

(o) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (j) above.

Section 1.2 Assignment of Leases and Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.5, Mortgagee grants to Mortgagor a revocable license to collect and receive the Rents. Mortgagor shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

Section 1.3 Security Agreement. This Mortgage is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code (the "UCC"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Mortgagee, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the UCC.

Section 1.4 Pledge of Monies Held. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter held by Mortgagee as additional security for the Obligations until expended or applied as provided in this Mortgage.

Section 1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage, shall well and truly perform the Other Obligations as set forth in this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor's obligation to indemnify and hold harmless Mortgagee pursuant to the provisions hereof shall survive any such payment or release..



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## ARTICLE II

### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Mortgage and the grants, assignments and transfers made in ARTICLE I are given for the purpose of securing the payment of the following, in such order of priority as Mortgagee may determine in its sole discretion (the "Debt"):

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Note, this Mortgage and the Other Security Documents (as hereinafter defined);
- (c) all other moneys agreed or provided to be paid by Mortgagor in the Note, or this Mortgage or the Other Security Documents, including the Obligations (as defined in the Loan Agreement);
- (d) all sums advanced pursuant to this Mortgage and to protect and preserve the Property and the lien and the security interest created hereby; and
- (e) all sums advanced and costs and expenses incurred by Mortgagee in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Mortgagor or Mortgagee.

Section 2.2 Other Obligations. This Mortgage and the grants, mortgages, assignments and transfers made in ARTICLE I are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) all other obligations of Mortgagor contained herein;
- (b) each obligation of Mortgagor contained in the Note and in the Other Security Documents; and
- (c) each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Mortgage or the Other Security Documents.

Section 2.3 Debt and Other Obligations. Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

Section 2.4 Payments. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in funds immediately available at the place where the Note is payable (or any other place as Mortgagee, in Mortgagee's sole discretion, may have established by delivery of written notice thereof to Mortgagor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount

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then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

## ARTICLE III

### MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

Section 3.1 Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Mortgage. The Maturity Date of the Loan (as defined in the Loan Agreement) is the date one (1) year after the Effective Date.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which wholly or partially secure or guaranty payment of the Note, including, without limitation that the Loan Agreement (collectively, the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 3.3 Condemnation. Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Following the occurrence of a condemnation or eminent domain, Mortgagor shall promptly proceed to restore, repair, replace or rebuild the same (i) to the extent practicable to be of at least equal value and of substantially the same character as prior to such condemnation or eminent domain, all to be effected in accordance with applicable law and (ii) in a first-class workmanlike and lien free manner. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Mortgagee. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Mortgagee may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of the award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.4 Restoration After Casualty/Condemnation.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty") Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, provided that Mortgagee makes the insurance proceeds from such Insured Casualty available to Mortgagor, Mortgagor shall promptly proceed to restore, repair, replace or rebuild the same (i) to the extent practicable to be of at least equal value and of substantially the same character as prior to such Insured Casualty, all to be effected in accordance with applicable law and (ii) in a first-class workmanlike and lien free manner. The expenses incurred by Mortgagee in the adjustment

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and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(b) Upon the occurrence of an Insured Casualty, Mortgagee shall have the right, at Mortgagor's sole cost and expense, to file a proof of loss with the respective insurance company or companies insuring such Insured Casualty and shall have the right to proceed to settle and adjust any claims with respect to such Insured Casualty without the consent of Mortgagor and may agree with the insurance company or companies on the amount to be paid upon the loss (any amounts so received, including without limitation any proceeds received from rental loss or business interruption coverages, the "Insurance Proceeds") and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to do so. Any Insurance Proceeds in connection therewith shall be due and payable solely to Mortgagee and held by Mortgagee in accordance with the terms of this Security Agreement. In the event Mortgagor or any party other than Mortgagee is a payee on any check representing Insurance Proceeds with respect to any Insured Casualty, Mortgagor shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Mortgagee. The expenses incurred by Mortgagee in the adjustment and collection of Insurance Proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand. Mortgagor hereby releases Mortgagee from any liability with respect to the settlement and adjustment by Mortgagee of any Insured Casualty.

(c) The Insurance Proceeds collected upon any Insured Casualty shall be applied to the payment of the Debt. Any such application to the Debt shall be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments.

Section 3.5 Leases and Rents. (a) Mortgagor may not enter into any Lease (including the renewal or extension of an existing Lease (a "Renewal Lease")) without the prior written consent of Mortgagee, at Mortgagor's expense, which consent may be withheld in Mortgagee's sole discretion.

Section 3.6 Waste. Mortgagor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any insurance policy required to be maintained pursuant to the Other Security Documents (each a "Policy" and collectively, the "Policies"), or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Mortgage.

Section 3.7 Payment For Labor and Materials. Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Liens (defined in the Loan Agreement).

Section 3.8 Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Mortgagor to Mortgagee for the purpose of further securing an Obligation secured hereby and any amendments, modifications or changes thereto.

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## ARTICLE IV

### PROPERTY USE

Section 4.1 Property Use. Mortgagor covenants and agrees that the Property shall be used only as general retail, in accordance with the manner in which such Property has historically been used, and for no other use, without the prior written consent of Mortgagee.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Mortgagor, to the best of Mortgagor's knowledge, represents and warrants to Mortgagee that:

Section 5.1 Warranty of Title. Mortgagor has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property and that Mortgagor possesses a fee simple absolute estate in the Land and the Improvements. Mortgagor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Mortgage and, subject to Permitted Liens, shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

Section 5.2 Status of Property.

(a) All required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws and other similar laws.

(c) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(d) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(e) The Property is served by public water and sewer systems or has on-site water and sewer systems adequate to service the Property and in compliance with all Applicable Laws.

(f) The Property is free from damage caused by fire or other casualty.

(g) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(h) Mortgagor has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

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Section 5.3 Illegal Activity. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Mortgagor's knowledge, there are no illegal activities or activities relating to controlled substance at the Property.

## ARTICLE VI

### OBLIGATIONS AND RELIANCE

Section 6.1 Relationship of Mortgagor and Mortgagee. The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Note, this Mortgage and the Other Security Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

Section 6.2 No Reliance on Mortgagee. The members, general partners, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property.

Section 6.3 No Mortgagee Obligations. Notwithstanding the provisions of Section 1.1(f) and (l) or Section 1.2, Mortgagee is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Mortgage, the Note or the Other Security Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

Section 6.4 Reliance. Mortgagor recognizes and acknowledges that in accepting the Note, this Mortgage and the Other Security Documents, Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in ARTICLE V and the Other Security Documents without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee; that such reliance existed on the part of Mortgagee prior to the date hereof; that the warranties and representations are a material inducement to Mortgagee in accepting the Note, this Mortgage and the Other Security Documents; and that Mortgagee would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in ARTICLE V and the Other Security Documents.

## ARTICLE VII

### FURTHER ASSURANCES

Section 7.1 Recording of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the

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Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Mortgagee in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do

## ARTICLE VIII

### DUE ON SALE/ENCUMBRANCE

Section 8.1 No Sale/Encumbrance. Mortgagor agrees that Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or any interest therein or any direct or indirect interest in Mortgage or permit the Property or any part thereof or any interest therein or any direct or indirect interest in Mortgage to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, as such actions are defined in the Loan Agreement. If any such non-permitted transfer occurs, Mortgagee in its sole and absolute discretion may declare all of the Debt to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Article XI below. Mortgagor acknowledges the materiality of the provisions of this Section 8.1 as a covenant of Mortgagor, given individual weight and consideration by Mortgagee in entering into the Loan, and that any transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Mortgagee's interest in the Property and be deemed a breach of the foregoing covenant.

## ARTICLE IX

### PREPAYMENT

Section 9.1 Prepayment. The Debt may be prepaid in whole or in part in accordance with the express terms and conditions of the Loan Agreement.

## ARTICLE X

### DEFAULT

Section 10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) an "Event of Default" (as such term is defined in the Loan Agreement) shall have occurred;
- (b) Mortgagor fails to perform any of its covenants in this Mortgage (after taking into account any applicable notice and cure periods); or

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(c) any misstatement or misrepresentation exists now or hereafter in any warranty or representation set forth.

Section 10.2 Cross Collateralization. The Mortgagor acknowledges that, in addition to this Mortgage, with respect to the Loan and the Debt, the Mortgagee has obtained (or will obtain) security interests in various other property owned by the additional makers under the Note, which property is more particularly described on Schedule 10.2, attached hereto (the "Additional Liens"). It is the intention of the parties that, in addition to the Obligations secured by this Mortgage, this Mortgage shall also secure the payment and performance of the "Obligations" secured by those certain mortgages and/or deeds of trust listed on Schedule 10.2 (the "Other Mortgages"). An "Event of Default" under the Other Mortgages shall be an "Event of Default" hereunder.

## ARTICLE XI

### RIGHTS AND REMEDIES

Section 11.1 Remedies. Upon the occurrence of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the Other Security Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt;

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(h) subject to any applicable law, the license granted to Mortgagor under Section 1.2 shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagee agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Mortgagor at its expense to assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums held in escrow or otherwise by Mortgagee in accordance with the terms of this Mortgage or any Other Security Document to the payment of the following items in any order in its sole discretion: (i) Taxes; (ii) premiums under any Policies (the "Insurance Premiums"); (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, this Mortgage and the Other Security Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage;

(k) surrender the Policies maintained pursuant the Other Security Documents, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such Insurance Premiums; or

(l) pursue such other remedies as Mortgagee may have under applicable law.



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In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 11.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Mortgage or the Other Security Documents, shall be applied by Mortgagee to the payment of the Debt in the manner set forth in the Loan Agreement.

Section 11.3 Right to Cure Defaults. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Upon the occurrence of any Event of Default, Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Loan Agreement) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 11.4 Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 11.6 Examination of Books and Records. Mortgagee, its agents, accountants and attorneys shall have the right, upon prior written notice to Mortgagor if no Event of Default exists, to examine and audit, during reasonable business hours, the records, books, management and other papers of Mortgagor and its affiliates or of any Indemnitor which pertain to their financial condition or the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Mortgagor, its affiliates or Indemnitor where the books and records are located. Mortgagee and its agents shall have the right to make copies and extracts from the foregoing records and other papers.

Section 11.7 Other Rights, etc. (a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor or any Indemnitor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security

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Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Mortgagee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 11.8 Right to Release Any Portion of the Property. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 Violation of Laws. If the Property and/or the Mortgagor are not in compliance with any and all laws, rules and regulations affecting the Mortgagor and the Property (the "Applicable Laws"), for so long as such non-compliance exists, Mortgagee may impose additional requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10 Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

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## ARTICLE XII

### INDEMNIFICATIONS

Section 12.1 General Indemnification. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Mortgage. Any amounts payable to Mortgagee by reason of the application of this Section 12.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid.

The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) related in any way whatsoever to the Loan or the applicable Indemnified Party's capacity as a result of the Loan. The term "Indemnified Parties" shall mean (a) Mortgagee, (b) the Affiliates (as defined in the Loan Agreement), officers, directors, shareholders, partners, members, managers, employees and trustees of Mortgagee, and (c) the heirs, legal representatives, successors and assigns of each of the foregoing.

Section 12.2 Mortgage and/or Intangible Tax. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the Other Security Documents.

Section 12.3 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

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## ARTICLE XIII

### WAIVERS

Section 13.1 Waiver of Counterclaim. Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents, or the Obligations.

Section 13.2 Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by Applicable Laws.

Section 13.3 Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except (a) with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and (b) with respect to matters for which Mortgagee is required by Applicable Laws to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

Section 13.4 Waiver of Statute of Limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 13.5 Sole Discretion of Mortgagee. Whenever pursuant to this Mortgage (a) Mortgagee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Mortgagee, or (c) any other decision or determination is to be made by Mortgagee, the decision of Mortgagee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Mortgagee, shall be in the sole discretion of Mortgagee, except as may be otherwise expressly and specifically provided herein.

**Section 13.6 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS MORTGAGE OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

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## ARTICLE XIV

### NOTICES

Section 14.1 Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and addressed as follows:

If to Mortgagors: c/o Structure Management Midwest, LLC  
908 N. Halsted Street  
Chicago, Illinois 60642  
Attention: Frederick S. Latsko  
Telephone: (312) 654-0100  
Facsimile: (312) 337-4002  
Email: fred@smm-llc.com

With a copy to: Warren C. Laski, Esq.  
1751 W. Surf Street  
Chicago, Illinois 60657  
Telephone: (773) 868-1100  
Facsimile: (773) 868-1102  
Email: [wlaski@gblrealty.com](mailto:wlaski@gblrealty.com)

If to Mortgagee: c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605  
Attention: Robert Masters, Esq.  
Telephone: (914) 288-8139  
Facsimile: (914) 288-2139  
Email: [rmasters@Acadirealty.com](mailto:rmasters@Acadirealty.com)

with a copy to: Paul Hastings LLP  
191 N. Wacker Drive, 30th Floor  
Chicago, Illinois 60606  
Attention: Bradley V. Ritter, Esq.  
Telephone: (312) 499-6073  
Facsimile: (312) 499-6173  
E-mail: [bradleyritter@paulhastings.com](mailto:bradleyritter@paulhastings.com)

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this subsection. All notices addressed as above shall be deemed to have been properly given (i) if served in person, upon acceptance or refusal of delivery; (ii) if mailed by certified or registered mail, return receipt requested, postage prepaid, on the third (3rd) day following the day such notice is deposited in any post office station or letter box; (iii) if sent by recognized overnight courier, on the first (1st) day following the day such notice is delivered to such carrier or (iv) if sent by facsimile or email transmission (to be followed immediately by an original sent by one of the other enumerated means), on the date such transmission is made. No notice to or demand on Mortgagors in any case shall entitle any Mortgagor to any other or further notice or demand in similar or other circumstances.

For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in Chicago, Illinois.

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## ARTICLE XV

### APPLICABLE LAW

Section 15.1 Choice of Law. This Mortgage shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

Section 15.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Laws.

## ARTICLE XVI

### COSTS

Section 16.1 Performance at Mortgagor's Expense. Mortgagor acknowledges and confirms that Mortgagee shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"); provided, however, that there shall be no commitment fee in connection with the initial granting of the Loan. Mortgagor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Mortgagee or any governmental or quasi-governmental authority. Mortgagor hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Mortgagor pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Mortgagee, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

Section 16.2 Legal Fees for Enforcement. (a) Mortgagor shall pay all reasonable legal fees incurred by Mortgagee in connection with the items set forth in Section 16.1 above, and (b) Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until such expenses are paid by Mortgagor, including, without limitation, all costs and expenses in connection with any "special servicing" of the Loan.

## ARTICLE XVII

### DEFINITIONS

Section 17.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and

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any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. Any terms used herein that are not otherwise defined herein shall have the meanings proscribed to such term in the Other Security Documents.

Section 17.2 Headings, etc. The headings and captions of various Articles and Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## ARTICLE XVIII

### MISCELLANEOUS PROVISIONS

Section 18.1 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 18.2 Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

Section 18.3 Inapplicable Provisions. If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

Section 18.4 Duplicate Originals; Counterparts. This Mortgage may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Mortgage may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Mortgage. The failure of any party hereto to execute this Mortgage, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 18.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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## ARTICLE XIX

### SPECIAL ILLINOIS PROVISIONS

The provisions of this ARTICLE XIX are an integral part of this Mortgage. In the event of any inconsistencies between the terms and conditions of this ARTICLE XIX and the other provisions of this Mortgage, the terms and conditions of this ARTICLE XIX shall be controlling.

Section 19.1 Amount Secured by Mortgage. This Mortgage secures the payment of the entire indebtedness secured hereby, including, without limitation, the Debt; provided, however that the total amount secured by this Mortgage shall not exceed an amount equal to Thirty Nine Million and 00/100 Dollars (\$39,000,000.00).

Section 19.2 ILLINOIS MORTGAGE FORECLOSURE LAW. It is the intention of the Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or lender until confirmation of sale;

(c) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, or the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to:

(i) all advances by Mortgagee in accordance with the terms of this Mortgage or the Loan Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Mortgagor of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;



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(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Property;

(v) Mortgagee's fees, costs and expenses, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Section 15-1512(a) and (b) of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes on or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property, (vii) if the Loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property and (ix) if this Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(viii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement.

(ix) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the Act.

(x) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

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(A) any determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(C) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;

(D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(E) application of income in the hands of any receiver or mortgagee in possession; and

(F) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act.

Section 19.3 Receiver. In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

Section 19.4 Right of Redemption/Reinstatement. Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption. In addition, to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement as allowed under 735 ILCS 5/15-1601 of the Act.

Section 19.5 Collateral Protection Act. As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Mortgagor is hereby notified that in the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or the Loan Agreement or evidence of their renewal as required herein or in the Loan Agreement, Mortgagee may, but shall not be obligated to, procure such insurance at Mortgagor's expense to protect Mortgagee's interests in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the terms of this Mortgage and the Loan Agreement. If Mortgagee purchases insurance for the Property as set forth herein, Mortgagor shall pay all amounts advanced by Mortgagee, together with interest thereon at the Default Rate (as defined in the Loan Agreement) from and after the date advanced by Mortgagee until actually repaid by Mortgagor, promptly upon demand by Mortgagee. Any amounts so advanced by Mortgagee, together with interest thereon, shall be secured by this Mortgage and by all of the other loan documents securing all or any part of the indebtedness

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evidenced by the Note. The costs of the insurance may be more than the cost of insurance Mortgageor may be able to obtain on its own.

Section 19.6 Forbidden Entity. Mortgageor hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

Section 19.7 Fixture Filing. Mortgageor hereby authorizes Mortgagee to record a financing statement in the real property records of the county where the Land is located in order to perfect Mortgagee's security interest in that portion of the Property constituting fixtures under the UCC. Notwithstanding the foregoing, from the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the UCC with respect to all sums on deposit with the Mortgagee pursuant to this Mortgage ("Deposits"), and with respect to the Personal Property and the goods described herein, which Personal Property and goods are or are to become fixtures related to the Property and all replacements of such property, all substitutions for such property, additions to such property and all proceeds thereof (all of which shall be included in the meaning of the term "Collateral"). The address of Mortgageor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth:

(i) Name and Address of Debtor:

2010 N. Halsted, LLC  
908 N. Halsted Street  
Chicago, IL 60642

(ii) Name and Address of Secured Party:

Acadia Hawk LLC  
1311 Mamaroneck Ave., Suite 260  
White Plains, NY 10605

- (iii) This document covers goods which are or are to become fixtures.
- (iv) Debtor is the record owner of the Property.
- (iv) Debtor's chief executive office is located in the State of Illinois.
- (v) Debtor's state of formation is Illinois.
- (vi) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (vii) Debtor's organizational identification number is 33-4705859.
- (viii) Debtor agrees that:

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(A) Where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgement from the third party that it is holding such Collateral for the benefit of Mortgagee;

(B) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(C) Until the Obligations are paid and satisfied in full, Mortgagor will not, without Mortgagee's prior written approval, change the state where it is located or change its company name.

Section 19.8 Interest Rate. Pursuant to the Note, the Loan Amount shall bear interest from the Effective Date until the completion of the UBS Paydown, at a rate equal to twelve percent (12.0%) and (ii) after the completion of the UBS Paydown, at a per annum rate of interest equal six percent (6.0%). In the event of a conflict between the interest rate set forth in the Note and the interest rate set forth in this Mortgage, the interest rate set forth in Note shall govern. As used herein, the term "UBS Paydown" shall have the same meaning ascribed to it in the Loan Agreement.

**[REMAINDER OF THIS PAGE BLANK]**

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IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Mortgagor the day and year first above written.

**BORROWER:**

**2010 N. HALSTED, LLC, an Illinois limited liability company**

By: \_\_\_\_\_  
Name: Frederick S. Latsko  
Its: Manager

Property of Cook County Clerk's Office

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**LENDER:**

ACADIA HAWK LLC, a Delaware limited liability company

By: 

Name: Robert Masters

Its: Senior Vice President

Property of Cook County Clerk's Office

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## ACKNOWLEDGEMENTS

STATE OF ILLINOIS                    )  
   )  
 COUNTY OF COOK                    )

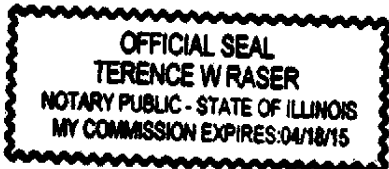
ss

I, the undersigned, a Notary Public in and for the County of Cook, in the State of Illinois, DO HEREBY CERTIFY that Frederick S. Wetsky personally known to me to be the Manager of 210 N. Halsted, LLC, an Illinois LLC, the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that he/she signed and delivered the foregoing instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 26<sup>th</sup> day of October, 2012.

Terence W. Raser  
 Notary Public

Commission Expires: 4-18-15



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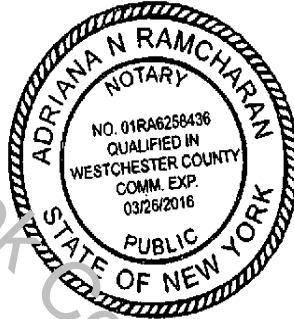
## ACKNOWLEDGEMENTS

STATE OF New York )  
 )  
COUNTY OF Westchester ) ss

I, the undersigned, a Notary Public in and for the County of Westchester, in the State of New York, DO HEREBY CERTIFY that Robert Masters personally known to me to be the Senior Vice President of **Acadia Hawk LLC**, a Delaware limited liability company, the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that he/she signed and delivered the foregoing instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 26<sup>th</sup> day of October, 2012

Adriana Ramcharan  
Notary Public



Commission Expires: 3/26/16



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 20 IN BLOCK 8 IN CUSHMAN'S SUBDIVISION OF BLOCK 4 OF SHEFFIELD'S ADDITION TO CHICAGO IN SECTIONS 29 THROUGH 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON STREET ADDRESS: 2010 N. Halsted, Chicago, Illinois 60614

REAL ESTATE TAX PINS: 14-32-228-041-0000

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## SCHEDULE 10.2

### Additional Liens

- (i) Second Amended and Restated Mortgage, with Assignment of Rents, Security Agreement and Fixture Filing recorded against 116 E. Oak located in Chicago, Illinois by 116 E Oak LLC for the benefit of Mortgagee.
- (ii) Second Amended and Restated Mortgage, with Assignment of Rents, Security Agreement and Fixture Filing recorded against 2118 N. Halsted located in Chicago, Illinois by 2118 Halsted Associates, LLC for the benefit of Mortgagee.
- (iii) Mortgage, with Assignment of Rents, Security Agreement and Fixture Filing to be recorded against 1150 N. Dearborn located in Chicago, Illinois by Biggs Mansion, LLC for the benefit of Mortgagee.